

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3771 OF 2005**

Nizamuddin Nasiruddin Shaikh

...Applicant

Vs.

The State of Maharashtra

...Respondent

Shri. Amin H. Solkar for the Applicant.

Mr. A. S. Gadkari, A.P.P. for the Respondent.

**CORAM : A.S.OKA, J.
DATED : JULY 18, 2005.**

P.C.:

1. Heard Shri. Solkar for the Applicant and the learned A.P.P. for the State. The offence alleged against the Applicant is under section 302 of the Indian Penal Code. Shri. Solkar invited my attention to the alleged dying declaration of the deceased. He pointed out that dying declaration and the panchnama dated 22nd July, 2004 is in the same handwriting. He submitted that dying declaration itself makes it clear that it is not recorded by any Special Executive Magistrate or Executive Magistrate as dying declaration itself recites that it was readover by the police and not by the Magistrate. He pointed out the statement of the mother of the deceased which shows that prior to the incident the deceased and the Applicant had married. He therefore, submitted that the motive alleged by the prosecution becomes doubtful. He, submitted that the Applicant is in custody from July, 2004 and considering the fact that the dying declaration of the deceased is itself doubtful, he is entitled to be enlarged on bail. The learned A.P.P. has opposed the Application.

2. In so far as submission regarding dying

declaration is concerned whether the Applicant was in a position to give statement or not is the matter to be decided at the time of trial. This is not a case where there is no other material against the Applicant save and except the dying declaration. There are statements of the neighbours which show presence of the Applicant at the time of the incident. The said statements, at this stage, show complicity of the Applicant. The statements of the minor children of the deceased are recorded, no doubt, after lapse of one month. Nevertheless, the said statements also support the prosecution.

3. Looking to the nature and gravity of allegations against the Applicant, this is not a case where the Applicant can be enlarged on bail. The trial can be expedited as the Applicant is in custody for last above five years.

4. Hence, I pass the following order:

: O R D E R :

i) Application is rejected. If Fast Track Court is available at Kalyan which is empowered to try the case, the trial of the case shall be entrusted to the Fast Track Court. The concerned Court will ensure that the trial is concluded at the earliest by treating the case as High Court expedited case.

JUDGE